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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/618,790

07/14/2003

Richard J. Dibbs

DST-10503/15

7314

25006 7590 01/03/2007

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EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/618,790

Applicant(s)

DIBBS, RICHARD J.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-73 and 86-97 is/are pending in the application.
- 4a) Of the above claim(s) 86-97 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**Claim Rejections - 35 USC § 103**

1. Claims 1, 2, 11-22, and 62-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751.

The claims stand rejected for the reasons set forth in the last Office Action. It should be noted that the instant claims further call for providing a certain temperature for a particular time to the in-shell egg which is set forth as "cooling" same. The apparatus of WO 97/02751 is clearly capable of providing adjusting the temperature of the heated contents whether it be for the claimed cool temperatures or the higher temperatures.

The instant claims call for the use of a quantity of energy to be predominantly directed the yolk of the egg and a second quantity of microwave energy imparted predominantly to the albumen of same. It should be noted that such recitation is broad enough to encompass a single microwave wherein same is capable of providing energy in a single dose such that the energy that is used to heat the egg white and the energy used to heat the yolk occur simultaneously and effects the yolk and white in different ways. Moreover, the microwave of WO 97/02751 has the capability of treating an egg to two or three different treatments with different temperatures.

2. Claims 3, 23, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751 taken together with Neiderer et al.

The claims stand rejected for the reasons set forth in the last Office Action.

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3. Claims 4, 5, 26, 27, and 29-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraphs 2 or 3 taken together with JP 2000-14269.

The claims stand rejected for the reasons set forth in the last Office Action.

4. Claims 6-8 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraphs 2 or 3 taken together with Van der Schoot (U.S. Patent No. 4872564).

The claims stand rejected for the reasons set forth in the last Office Action.

5. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751 taken together with Anshutz.

The claims stand rejected for the reasons set forth in the last Office Action.

### **Response to Arguments**

6. Applicant's arguments filed 10/17/06 have been fully considered but they are not persuasive.

Applicant argues that Purdue (WO 97/02751) fails to teach or suggest the targeted method of using microwave energy as set forth in the instant claims. It should be noted, however, that the instant claims are all apparatus claims. The prior art need not show the actual targeting strategy as Applicant argues, but merely have the ability to be able to carry out such steps. Certainly, the microwave component of the Purdue reference has the ability to change time and energy constraints and would reasonably be expected to be able to perform the particular strategy steps set forth in the instant claims and to pasteurize said egg including the use of more than one heating step

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(heating a first time and then heating again in a separate step). Evidence for such temperature/time adjustment is found in Example 1. See also claim 9. Nevertheless, the apparatus of Purdue can be related to the instant claims in another way. It should be noted by using the microwave of Purdue, the energy imparted to the egg all at once comprises the quantity of heat imparted to the yolk and a second quantity of heat imparted to the albumen wherein the heating of each material would result in different temperature profiles due to the distinct compositional differences of same.

Pasteurization (at or under 59 C) is eventually attained.

Applicant argues that the secondary references are unrelated to microwave pasteurization. However, such references were not applied alone for their teachings regarding microwave pasteurization, but as added references to the primary to show the known use of the claimed devices employed in conjunction with the pasteurizing of the egg. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such devices as egg treatment/analysis apparatus regardless of the device used for pasteurizing the eggs.

All other arguments have been addressed in view of the rejections as set forth above (and previously set forth).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

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Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
December 15, 2006

Anthony Weier  
Primary Examiner  
Art Unit 1761



12/15/06